

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEVI ISAAH DITTA,

Defendant-Appellant.

UNPUBLISHED

May 20, 2010

No. 289604

Cheboygan Circuit Court

LC No. 08-003815-FC

Before: WHITBECK, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of two counts of safebreaking, MCL 750.531; one count of racketeering, MCL 750.159i(1); one count of conspiracy to commit racketeering, MCL 750.159i(4); two counts of breaking and entering a building with intent to commit larceny, MCL 750.110; and six counts of possession of burglar's tools, MCL 750.116. We affirm.

Defendant's convictions arose out a series of break-ins that occurred in restaurants and small businesses in Cheboygan, Emmet, and Presque Isle counties. An accomplice testified pursuant to a plea agreement that he and defendant had planned and performed the break-ins to make "easy money." The accomplice described each break-in and detailed what was stolen. He also described the tools he and defendant used in order to enter the premises or open safes. Two other witnesses, who had acted as lookouts or drivers for some of the break-ins, also testified concerning defendant's involvement in the break-ins. Other witnesses provided corroborating testimony about corresponding events.

Appellate counsel argues that the trial court erred by admitting into evidence information about a subsequent Florida break-in and defendant's drug use. We review these preserved evidentiary issues for abuse of discretion. *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007). We conclude that the trial court was within its discretion in admitting the challenged evidence. The prosecuting attorney met her burden under MRE 404(b) of establishing that the evidence was both relevant and offered for a proper purpose. The trial court properly assessed the probative value of the evidence and its potential for unfair prejudice, and found that the latter did not outweigh the former. See *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). In addition, the trial court instructed the jury on the proper use of the evidence. *Id.* Appellate counsel has failed to bring any error to light.

In his Standard 4 brief, defendant argues that the evidence was insufficient to convict him of conducting a criminal enterprise. We review this claim de novo. *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005). Having carefully examined the record, we conclude that the prosecuting attorney presented sufficient evidence from which a reasonable juror could conclude that defendant engaged in a pattern of racketeering activity that constituted conducting a criminal enterprise. In this regard, we note that defendant's reliance on federal cases to interpret the Michigan statute is misplaced. *People v Gonzalez*, 469 Mich 967; 671 NW2d 536 (2003).

Defendant also asserts that the prosecuting attorney engaged in numerous instances of misconduct. We disagree. The record shows that any dispute over the lack of disclosure of redacted recordings was resolved favorably for defendant. The record further shows that the prosecuting attorney accurately presented the evidence, and refrained from engaging in vouching or bolstering. Given that defendant has brought no prosecutorial misconduct to light, we necessarily reject defendant's corollary claim that his trial attorney was ineffective for failing to object to the alleged misconduct. Counsel is not required to pursue meritless objections. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

We also reject defendant's assertion that the trial court was biased. The references defendant provides in support of his assertion in fact show that the trial court accurately recited the legal principles controlling its rulings. The rulings alone cannot support a finding of bias. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597-598; 640 NW2d 321 (2001).

Lastly, defendant claims that the trial court erred by allowing the prosecuting attorney to display in the courtroom a safe from one of the break-ins. We review this unpreserved claim for plain error affecting defendant's substantial rights. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). To the extent the safe was actually visible to the jurors in the courtroom, no plain error is apparent. The record shows that there was ample evidence to convict defendant as charged, regardless of the presence of the safe. Defendant has shown no prejudice in the matter.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Stephen L. Borrello